

## INSTRUCTIONS FOR REQUESTS TO PROHIBIT PUBLIC ACCESS TO A DEFENDANT'S COURT RECORD IN A CRIMINAL CASE

### IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees cannot help you fill out forms.

If you are unsure how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

To protect your rights, carefully read this information and any instructions to which you are referred.

**When you represent yourself, you must abide by the following:**

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
  - North Dakota Rules of Civil Procedure;
  - North Dakota Rules of Court;
  - North Dakota Rules of Evidence;
  - North Dakota Administrative Rules and Orders; and
  - Any local court rules.

Links to the state laws, case law, and court rules can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

**When you represent yourself, you are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.** If you are unsure if these forms and instructions suit your circumstances, consult a lawyer.

A glossary with definitions of legal terms is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

***These instructions and forms are not a complete statement of the law. They cover basic procedure for motioning a North Dakota state district court to prohibit public internet access to a defendant's court record in a criminal case. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center is not responsible for any consequences that may result from the forms or information provided.***

**Use at your own risk.**

### **NO ASSISTANCE WITH COURT PROCESS IN CRIMINAL CASES**

The ND Legal Self Help Center provides information about the court process in civil cases only. The ND Legal Self Help Center cannot provide assistance with court process in criminal cases and does not have expertise available in this area.

## What Rules Do I Need to Know to Use this Packet?

[Rule 41, Section 5\(f\)\(1\)\(G\) of the North Dakota Supreme Court Administrative Rules](#) governs requests to prohibit public access to a defendant's court record in a criminal case in North Dakota.

[Rule 47 of the North Dakota Rules of Criminal Procedure](#) governs motions in a criminal case in North Dakota.

[Rule 3.2 of the North Dakota Rule of Court](#) also governs motions in a criminal case in North Dakota.

## Who May Use this Packet?

1. An individual who has been charged with a criminal offense **AND**:
  - a. The charges were dismissed; **or**
  - b. The individual was acquitted;

### **AND**

2. The individual wants to ask a North Dakota state district court to prohibit public access to the court records.

## This Packet **DOESN'T** Expunge (Delete) Criminal Records

Even if public access to an individual's criminal court record is prohibited by the Court, the Court's order **does not** delete (expunge) the information from the individual's criminal history record.

Criminal history records are maintained by the Bureau of Criminal Investigation (BCI), a division of the Office of Attorney General. For additional information about BCI, go to [attorneygeneral.nd.gov](http://attorneygeneral.nd.gov).

**This packet cannot be used to request expungement (deletion) of criminal records.** The ND Legal Self Help Center **does not** have forms or instructions for expunging criminal records.

You may wish to research expungement more yourself or consult a lawyer for options.

- To research expungement options in North Dakota, go to [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the “Miscellaneous” section and click on the “Criminal Matters – Expungement” link.
- To research sealing a criminal record options in North Dakota, go to [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the “Miscellaneous” section and click on the “Criminal Matters – Sealing Criminal Records” link.

## Definitions

**Defendant** – An individual who was charged with a criminal offense.

**Plaintiff** – In criminal cases, the Plaintiff is the government, in the form of the prosecutor.

## Forms in this Packet

1. Notice of Motion to Prohibit Public Access to Records
2. Motion to Prohibit Public Access to Records
3. Brief in Support of Motion to Prohibit Public Access
4. Affidavit in Support of Motion to Prohibit Public Access
5. Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access
6. Affidavit of Service by Mail
7. Affidavit of Personal Service

## Before Completing and Signing the Forms

**Review the forms carefully and determine if the forms apply to your situation.** If you do not know if you should use these forms, consult a lawyer who is licensed to practice in North Dakota and can agree to represent you.

When you sign the forms, your signature tells the Court that you:

- Made reasonable inquiries about the motion requirements; **and**
- Based on your inquiries, to the best of your knowledge, information, and belief:
  - You are not presenting the motion for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

- The claims, defenses, and other legal contentions in the motion are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- The facts you present in the motion are supported by evidence or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- Denials of any facts in the motion are warranted on the evidence or are reasonably based on belief or a lack of information.

See [North Dakota Rules of Civil Procedure Rule 11](#) for signature requirements, representations to the Court, and sanctions for motions and other documents presented to a Court.


**Request copies of the court records in the case(s) in which you want to limit public access.** If your request is granted by the state district court, you may not be able to get copies of the records in the case(s) without making a new, written request for access. Contact the Clerk of Court's office in the North Dakota county that heard your case(s) to request copies of the records.

Consider requesting at least one certified copy of the records, as well.

### If your Request to Prohibit Public Access is Granted

If the North Dakota state district court grants your request to prohibit public access to your court records in your criminal case(s), people can still search publically available court records by your name or case number.

**The public search results will look similar to this:**

Criminal Case Records Search Results					
<a href="#">Skip to Main Content</a> <a href="#">Logout My Account</a> <a href="#">Search Menu</a> <a href="#">New Criminal Search</a> <a href="#">Refine Search</a>				Location : State of North Dakota <a href="#">Help</a>	
Record Count: 1					
Search By: Defendant   Exact Name: on   Party Search Mode: Name   Last Name: Doe   First Name: Jon   Middle Name: Alan   All All   Sort By: Filed Date					
Case Number	Citation Number	Defendant Info	Filed/Location/Judicial Officer	Type/Status	Charge(s)
 <a href="#">09-2013-CR-0000</a>				Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 - For more information see <a href="http://www.ndcourts.gov/ar41.htm">www.ndcourts.gov/ar41.htm</a>	

After clicking on the Case Number, the Register of Actions for your case(s) will look similar to this:

<a href="#">Skip to Main Content</a> <a href="#">Logout My Account</a> <a href="#">Search Menu</a> <a href="#">New Criminal Search</a> <a href="#">Refine Search</a> <a href="#">Back</a>		Location : State of North Dakota <a href="#">Help</a>
<b>REGISTER OF ACTIONS</b>		
PARTY INFORMATION		
Defendant	<b>Doe, Jon Alan</b> New London, MN 56273	DOB: 1980
Plaintiff	State of North Dakota	
Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 - For more information see <a href="http://www.ndcourts.gov/ar41.htm">www.ndcourts.gov/ar41.htm</a>		

Your name, city, state, zip code and year of birth remain publically available.

However, the listing of records and events in your case(s) is replaced with "Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 – For more information see [www.ndcourts.gov/legal-resources/rules/ndsupctadminr/41](http://www.ndcourts.gov/legal-resources/rules/ndsupctadminr/41)."

## Steps to Prepare, Serve and File the Forms in the Packet

### **STEP 1: YOU, THE DEFENDANT, PREPARES THE FORMS**

#### **1. Notice of Motion to Prohibit Public Access to Records**

This is the required written notice to the party that prosecuted the criminal case(s).

- Fill out the top of the form with the county and judicial district where the case was filed. (The county is within the judicial district.) County and judicial district information and maps are available at [www.ndcourts.gov/court-locations](http://www.ndcourts.gov/court-locations).
- Fill in the criminal case number(s).
- Sign and date the Notice of Motion to Prohibit Public Access. Complete the signature block.
- If your mailing address is different than your street (physical) address, write your mailing address in the blank space next to the signature block.

#### **2. Motion to Prohibit Public Access to Records**

This is the required written request to the Court to prohibit public access to the court records in the criminal case(s).

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion to Prohibit Public Access.
- Sign and date the Motion to Prohibit Public Access. Complete the signature block.

- If your mailing address is different than your street (physical) address, write your mailing address in the blank space next to the signature block.

### 3. **Brief in Support of Motion to Prohibit Public Access**

This is the required written document that explains why you, the defendant, should have the motion granted. A brief takes the relevant laws or rules and applies them to the facts of a particular situation.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion to Prohibit Public Access.
- Paragraph 2 – fill in the date of the charges, the charges filed, and the date of the dismissal of the charges or acquittal. Put a checkmark (✓) in the box to indicate whether the charges were dismissed, or you were acquitted of the charges, or both.
- Paragraph 6 – put a checkmark (✓) in the box for dismissal of the charges, or acquittal, or both. Fill in the reason for the dismissal of the charges and/or the acquittal. Do not write on the back of the form.
- Paragraph 7 – explain in detail why public access to the records should be prohibited. Do not write on the back of the form.
  - If you need to attach additional sheets to your explanation, put a checkmark (✓) in the box next to “Additional sheets are attached as Exhibit A.” Write “Exhibit A” on all pages of the additional sheets of your explanation.
  - **DO NOT** write on the back of any of your additional sheets.
- Sign and date the motion and supporting brief. Complete the signature block.
- If your mailing address is different than your street (physical) address, write your mailing address in the blank space below the signature block.

### 4. **Affidavit in Support of Motion to Prohibit Public Access**

This is your required written statement of fact. The affidavit must be dated and signed by you, the defendant.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion to Prohibit Public Internet Access.
- First sentence – fill your full, legal name.
- Paragraph 2 – fill in the date of the charge(s) and list the charge(s) that were filed.
- Paragraph 3 – fill in the date the charges were dismissed or the date of the acquittal. Put a checkmark (✓) in the box to indicate whether the charges were dismissed, or you were acquitted of the charges, or both.

- Paragraph 4 – put a checkmark (✓) in the box for dismissal of the charges, or acquittal, or both. Fill in the reason for the dismissal of charges and/or the acquittal. Do not write on the back of the form.
- Paragraph 5 – explain in detail why public access to the records should be prohibited. Do not write on the back of the form.
  - If you need to attach additional sheets to your explanation, put a checkmark (✓) in the box next to “Additional sheets are attached as Exhibit B.” Write “Exhibit B” on all pages of the additional sheets of your explanation.
  - **DO NOT** write on the back of any of your additional sheets.
- Fill in the state, county, and country where the affidavit is being signed.
- Sign and date the affidavit. Complete the signature block.
- If your mailing address is different than your street (physical) address, write your mailing address in the blank space below the signature block.

5. **Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access**

This is your proposed Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access. The Judge or Referee assigned to your request will ultimately decide whether or not to grant your request. The Judge or Referee will also decide whether or not to use this document.

Findings of Fact are the Court’s written determination of the facts made from the evidence presented in the motion. This explains what facts the court found to be true.

Conclusions of Law are the rulings of law made by the Court based on, or in connection with, the Findings of Fact. These are the legal consequences of the facts the court found to be true.

Order is your proposed order the judge may sign to prohibit public access.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion to Prohibit Public Access.
- Do not fill in any other information.

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## **STEP 2: YOU, THE DEFENDANT, ARRANGE FOR SERVICE OF COPIES OF THE FORMS**

You must serve a copy of the following completed forms and any exhibits on all parties in the criminal case(s):

- Notice of Motion to Prohibit Public Access;
- Motion to Prohibit Public Access;
- Brief in Support of Motion to Prohibit Public Access;
- Affidavit in Support of Motion to Prohibit Public Access;
- Proposed Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access; and
- Any exhibits (*you may not have any exhibits*).

You can use the Affidavit of Service by Mail or Affidavit of Personal Service, depending on how you choose to complete service.

### **1. Affidavit of Service by Mail**

In order to complete service by mail, the person serving the documents must mail copies of the documents to all parties in the case. The person serving the documents must be at least 18 years of age.

If serving the State's Attorney by mail, the person mailing the documents must mail them to the State's Attorney's office. Contact information for State's Attorneys in North Dakota can be found on the ND Courts website: [www.ndcourts.gov/court-locations](http://www.ndcourts.gov/court-locations). Click the name of the County for the State's Attorney contact information.

Postage must be pre-paid. The person mailing the documents must complete the Affidavit of Service by Mail. Service is complete upon mailing.

To complete the Affidavit of Service by Mail, the person who mailed the documents:

- Fills out the top of the form exactly as the top of the Notice of Motion to Prohibit Public Access was filled out.
- Fills in the time and date the documents were mailed.
- Fills in the name and address of the State's Attorney.
  - The complete address of the State's Attorney must be included on the Affidavit of Service by Mail and on the mailing envelope.
- Fills in the state, county, and country where the affidavit is being signed.



- Signs and dates the affidavit. Completes the signature block.
- If the mailing address of the person who mailed the documents is different than their street (physical) address, they should write the mailing address in the blank space below the signature block.

The completed Affidavit of Service by Mail is filed with the Clerk of Court in **Step 3**.

## 2. **Affidavit of Personal Service**

In order to complete service by personal service, the person serving the documents must leave copies of the documents with all parties in the case. The person serving the documents must be at least 18 years of age **and** not a party or interested in the criminal case(s).

If serving the State's Attorney's office, the person serving the documents must leave the documents in the Office of the State's Attorney for the county the original case was filed in. Contact information for State's Attorneys in North Dakota can be found above.

To complete the Affidavit of Personal Service, the person who served the documents:

- Fills out the top of the form exactly as the top of the Notice of Motion to Prohibit Public Access was filled out.
- Fills in the time and date the documents were served.
- Fills in the name of State's Attorney office where the documents were served.
- Fills in the address of the State's Attorney office where the documents were served.
- Fills in the state, county, and country where the affidavit is being signed.
- Signs and dates the affidavit. Completes the signature block.
- If the mailing address of the person who mailed the documents is different than their street (physical) address, they should write the mailing address in the blank space below the signature block.

The completed Affidavit of Personal Service is filed with the Clerk of Court in **Step 3**.

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### **STEP 3: YOU, THE DEFENDANT, FILE THE ORIGINAL, COMPLETED FORMS WITH THE CLERK OF COURT**

File the following original, completed forms and any exhibits with the clerk of court where the criminal case(s) is filed:

1. Notice of Motion to Prohibit Public Access;
2. Motion to Prohibit Public Access;
3. Brief in Support of Motion to Prohibit Public Access;
4. Affidavit in Support of Motion to Prohibit Public Access;
5. Proposed Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access;
6. Any exhibits (*you may not have any exhibits*); and
7. Proof of Service Document – file the document based on which method of service you chose to complete service:
  - a. Affidavit of Service by Mail
  - b. Affidavit of Personal Service

You may be asked to pay a filing fee. Verify with the Clerk of Court if you are required to pay a filing fee. If you cannot afford the filing fee, complete the Fee Waiver Forms available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) under “Miscellaneous.” File the Fee Waiver Forms at the same time you file your motion documents.

After your Motion is filed with the Clerk of Court, the Clerk of Court will forward your motion to the Judge or Referee for review.

### **STEP 4: REVIEW OF THE COURT**

#### **If the Motion is Granted**

If the Court determines there are reasonable grounds to prohibit public access, the Judge will sign a Findings of Fact, Conclusions of Law, and Order.

The Clerk of Court will be instructed by the order to restrict public access to the records in the matter and ensure that public search results for the records displays the words “Internet Access Prohibited under N.D.Sup.Ct.Admin.R 41.”

#### **If the Motion is not Granted**

If the Court determines that there are not reasonable grounds to prohibit public access, the Court will issue an Order denying the motion and the records will remain open to public access.